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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 126

THE ORDER OF RAILROAD TELEGRAPHERS, *Petitioner*

v.

THE NEW YORK CENTRAL RAILROAD COMPANY
(Buffalo and East), *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

The Order of Railroad Telegraphers prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Second Circuit entered on March 30, 1950, which affirmed the judgment entered on September 22, 1949, of the United States District Court for the Southern District of New York.

Opinions Below

The opinion of the Court of Appeals (R. 154) is reported in 181 F. (2d) 113. The opinion of the District Court (R. 16) has not been officially reported.

Jurisdiction

The judgment of the Court of Appeals was entered on March 30, 1950 (R. 161). The jurisdiction of this Court is invoked under Section 1254 of Title 28 of the U. S. Code.

Questions Presented

As in *Slocum* v. *The Delaware, Lackawanna & Western R. Co.*, No. 391, decided April 10, 1950, and *Order of Railway Conductors* v. *Southern Railway Company*, No. 438, decided April 10, 1950, the issues in this case relate to the exclusiveness of the jurisdiction of the National Railroad Adjustment Board over the interpretation and application of railroad collective bargaining agreements. Here is involved another phase of the continuous effort by the carriers to subtract from that jurisdiction in favor of some other tribunal. The specific questions presented are:

1. Whether, under the Railway Labor Act, the authority of the National Railroad Adjustment Board to interpret collective bargaining agreements is exclusive or whether a board of arbitration which had issued an award that had been executed through the revision of a collective bargaining agreement in accordance therewith had authority to interpret the agreement as so revised.

2. Whether, under the guise of interpretation, a board of arbitration exceeded the authority delegated to it by deciding questions not referred to it and by amending, rather than interpreting, its original award.

Statutes Involved

The pertinent provisions of the Railway Labor Act (48 Stat. 1185; 45 U. S. C. 151 et seq.) are set forth in the appendix, *infra*, at pp. 17 to 19.

Statement

The Order of Railroad Telegraphers, hereafter referred to as "ORT", is a labor organization duly designated and authorized to represent certain employees of the New York Central Railroad Company (Buffalo and East), hereafter referred to as the "New York Central". The New York Central is a railroad subject to the Railway Labor Act (45 U. S. C. 151, First). On April 30, 1945, in accordance with Section 6 of the Act (45 U. S. C. 156), ORT served written notice upon the New York Central that it desired certain specific changes in the existing agreement governing the working conditions of the persons represented by it and employed by the New York Central. These changes involved extensive amendments to the entire agreement and were of the character which is generally referred to as a general schedule revision. New York Central offered counter proposals and thereupon a series of conferences was held. Agreement was reached with respect to changes in certain of the proposed rules and these changes were reduced to writing with the understanding that they would be incorporated into the complete revised agreement that should be drawn when accord could be reached on the remaining rules. (R. 8 and 13.)

In order to reach agreement on the remaining provisions of the contract, ORT invoked the mediation services of the National Mediation Board, pursuant to Section 5 of the Railway Labor Act (45 U. S. C. 155). As a result of the mediation, agreement was reached on March 19, 1948, with respect to additional rules. These rules were incorporated in a mediation agreement (R. 137-145) and were to become effective when the parties could reach agreement on the entire revision.

The disagreement with respect to seven remaining rules was submitted to arbitration under an arbitration agreement as provided by Section 8 of the Railway Labor Act (45 U. S. C. 158) (R. 23). A board of three arbitrators was appointed, held hearings at which both parties to the

dispute introduced evidence, and rendered an award on June 24, 1948 (R. 109). This award was duly filed in the Office of the Clerk of the United States District Court for the Southern District of New York and no petition to impeach it was filed by either party to the arbitration.

ORT and New York Central carried out the understanding under which the direct negotiations had concluded, as well as the terms of the mediation agreement and the arbitration award, by entering into a revised comprehensive collective bargaining agreement effective July 1, 1948, setting forth all of the rules and working conditions applicable to the employees represented by ORT and superseding all previous rules and working conditions (R. 146). This agreement covered the subject matter contained in the award of the arbitration board as well as the rules agreed to through mediation and the rules decided upon in the initial negotiations between the parties.

Disputes arose between ORT and the New York Central with respect to the proper interpretation of some of the terms of the contract. These terms happened to be provisions in the contract which had been reached through the arbitration proceedings. New York Central requested the National Mediation Board to reconvene the board of arbitration in order that it might interpret the provisions in question (R. 50). ORT asserted that the arbitration board had no authority to interpret the award since the award had been fully executed through the making of the contract between the parties and that the interpretation of the contract should be referred to the National Railroad Adjustment Board as was required by Section 3 of the Railway Labor Act (45 U. S. C. 153) (R. 76 and 86). The Mediation Board reconvened the arbitration board without determining whether or not the arbitration board had jurisdiction to make the requested interpretation (R. 108). The board of arbitration reconvened and ORT again objected that it had no power to interpret its award (R. 125).

On January 15, 1949, the board of arbitration issued a purported interpretation in which it did not assume to pass upon the question of its own authority, but, instead, mistakenly assumed that the Mediation Board had determined the question in the affirmative (R. 126). The purported interpretation was filed in the United States District Court for the Southern District of New York on the 17th day of January, 1949, and ORT filed a timely petition to impeach (R. 2). After an answer had been filed by New York Central (R. 4) and cross motions for summary judgment had been filed by both parties (R. 7 and 12) and argument had been held, the Court issued a decision on September 22, 1949, dismissing the petition to impeach (R. 16). On appeal the Court of Appeals affirmed this judgment (R. 154).

Specification of Errors to be Urged

The Court below erred:

1. In holding that a board of arbitration has jurisdiction to interpret a provision in a collective bargaining agreement arrived at through arbitration.

2. In failing to hold, as this Court has held, that the statutory jurisdiction of the National Railroad Adjustment Board to determine disputes growing "out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions" is exclusive.

3. In holding that the particular interpretations by the arbitration board were within the scope of its authority and were interpretations of, rather than amendments to, its original award.

Reasons for Granting the Writ

1. The Court below has decided a novel question of federal law of very great importance in the administration of the Railway Labor Act (48 Stat. 1185; 45 U. S. C. 151).

The opinion results in transferring to boards of arbitration a substantial part of the interpretative powers which this Court has held Congress vested exclusively in the National Railroad Adjustment Board. We believe the decision not only to be erroneous but to have potentialities for extremely serious consequences in the functioning of the Railway Labor Act.

The Railway Labor Act, as amended in 1934, establishes a comprehensive plan for settling railroad labor disputes. Its provisions have grown out of a considerable experience in the field dating back to 1888 (25 Stat. 501) extending through the period of government operation during the first world war, the Transportation Act of 1920, and the original version of the present Act which was adopted in 1926.[1]

The antecedents of the present Railway Labor Act had vested the power to interpret collective bargaining agreements either in the same board charged with the duty of encouraging the formation of the agreements or in local boards to be formed for particular railroads and groups of employees. Neither of these systems had worked satisfactorily. The local boards had failed because of the extreme partisan feeling of their members, the absence of uniformity of interpretations on a national scale, and the relatively inferior grade of personnel available for such boards. See Garrison, "*The National Railroad Adjustment Board: A Unique Administrative Agency*", 46 Yale L. J. 567, 574-6. Therefore, by Section 3 of the Railway Labor Act power to interpret collective bargaining agreements was specifically vested in the National Railroad Adjustment Board (45 U. S. C. 153) and either party to a

[1] See *Fifteenth Annual Report of the National Mediation Board*, pp. 5-8.

dispute involving such interpretation was granted the right to refer such dispute to that Board.[2]

Boards of arbitration as provided for in Sections 7, 8 and 9 of the Act, are not national in character nor permanent in existence. They are a device to be resorted to by agreement between labor and management in order to avoid work stoppages as a result of disputes which have not been resolved either by direct negotiations or by mediation. According to the most recent reports of the National Mediation Board arbitration has been resorted to in 211 instances since 1934.[3]

Although the issue and the decision of this Court in *Elgin, Joliet & Eastern Railway Company* v. *Burley*, 325 U. S. 711, are unrelated to the issue here, the Court's consideration of the functions of the Adjustment Board and the differentiation of those functions from those of the mediation-arbitration procedure are pertinent. In that case this Court said at pages 722-723:

> "The difference between disputes over grievances and disputes concerning the making of collective agreements is traditional in railway labor affairs. It has assumed large importance in the Railway Labor Act of 1934, substantively and procedurally. It divides the jurisdiction and functions of the Adjustment

[2] The statute provides that if direct negotiations to settle a dispute dealing with interpretation fail, either party may refer the dispute to the Adjustment Board. The existence of a concurrent power of interpretation in an arbitration board is inconsistent with this provision since an appeal to an arbitration board by one of the disputants would deprive the other of his statutory privilege to bring the matter before the Adjustment Board.

[3] See *Fourteenth Annual Report of the National Mediation Board*, p. 37; *Fifteenth Annual Report of the National Mediation Board*, p. 38. This number is to be compared with 24,467 cases docketed by the First Division only of the National Railroad Adjustment Board as reported at page 70 of the Fifteenth Annual Report referred to above. The number of cases handled by the other three Divisions of the Adjustment Board is not tabulated in that report but it is indicated that 649 new cases were docketed by the three other divisions in the fiscal year covered by the report. See pp. 72, 73, and 75.

Board from those of the Mediation Board, giving them their distinct characters. * * *

* * * * *

"The two sorts of dispute are sharply distinguished, though there are points of common treatment. Nevertheless, it is clear from the Act itself, from the history of railway labor disputes and from the legislative history of the various statutes which have dealt with them, that Congress has drawn major lines of difference between the two classes of controversy.

"The first relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.

"The second class, however, contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case."

When this Court had occasion at the current term again to examine the provisions of the Railway Labor Act it held that the power to interpret and apply railroad collective bargaining agreements is vested in the National Railroad Adjustment Board to the exclusion of the courts. *Slocum* v. *The Delaware, Lackawanna and Western Railroad Company*, No. 391, decided April 10, 1950. In that case this Court specifically referred to the "desirable degree of uniformity in the interpretation of agreements throughout the nation's railway systems" made possible by vesting all powers of interpretation in a single national board. The court said without qualification or limitation: "We hold that the jurisdiction of the Board to adjust grievances and

disputes of the type here involved is exclusive.'"[4] And in the companion case of *Order of Railway Conductors* v. *Southern Railway Company,* No. 438, also decided April 10, 1950, the Court stated that "sustaining the State court's action would invite races of diligence whenever a carrier or a union preferred one forum to the other. And if a carrier or a union could choose a court instead of the Board, the other party would be deprived of the privilege conferred by § 3 First (i) of the Railway Labor Act, 45 U. S. C. § 153 First (i), which provides that after negotiations have failed 'either party' may refer the dispute to the appropriate division of the Adjustment Board." All of these considerations are equally pertinent to sustain the exclusive authority of the Adjustment Board against incursions by arbitration boards.

It is apparent from its opinion that the Court below regarded the fact that resort to the Adjustment Board is not compulsory upon either party so long as the other party does not refer the dispute there for determination as indicative that that Board's jurisdiction is not exclusive. But obviously non-exclusiveness of a tribunal's jurisdicton cannot be inferred from lack of compulsion to resort to any tribunal.

Recognizing that the question was a novel one and that there had been no administrative determination of the

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[4] The court specifically reaffirmed the position taken in *Order of Railway Conductors* v. *Pitney,* 326 U. S. 561, where it stated at page 566: "The record shows, however, that interpretation of these contracts involves more than the mere construction of a 'document' in terms of the ordinary meaning of words and their position. * * * For O. R. C.'s agreements with the railroad must be read in the light of others between the railroad and B. R. T. And since all parties seek to support their particular interpretation of these agreements by evidence as to usage, practice and custom, that too must be taken into account and properly understood. The factual question is intricate and technical. An agency especially competent and specifically designated to deal with it has been created by Congress. Under these circumstances the court should exercise equitable discretion to give that agency the first opportunity to pass on the issue."

issue,[5] the Court below found concurrent[6] jurisdiction in the arbitration board flowing from the power given to boards of arbitration generally by statute (45 U. S. C. 155, Third (d)) and to this board in particular by the specific arbitration agreement (R. 25) to interpret their own awards. This authority, it is argued, survives the incorporation of the arbitrated rules into the collective bargaining agreement by reason of the provision in the arbitration agreement that it shall continue in effect "in accordance with the provisions of the Railway Labor Act, as amended." (R. 24) To argue that this provision vests in the board of arbitration a continuing power to interpret the agreement

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[5] There was no administrative determination since the National Mediation Board reconvened the arbitration board without making any finding as to the latter's authority and later specifically refrained from taking any position in court with respect to that authority. The board of arbitration in turn mistakenly assumed that the Mediation Board had established its authority and made no attempt to make a decision itself.

[6] The opinion of the District Court expressly states that the jurisdiction of the arbitration board and of the Adjustment Board are concurrent (R. 19). The same conclusion is implicit in the statement of the Court of Appeals, after referring to recourse to the Adjustment Board, that: "We see no evidence that Congress intended to foreclose other avenues for settling disputes once a contract was signed." (R. 158) Thus both courts below recognized that the dispute determined by the arbitration board's "interpretation" is the identical dispute of which the Adjustment Board has jurisdiction even though the arbitration board's determination of it it in the guise of interpreting the "award" rather than the agreement. In this respect they were clearly correct. Any other view would assign relevance to a completely meaningless distiction. What is in dispute is the day-to-day application of certain working rules that are in the agreement as a result of the arbitration. Whoever determines that dispute performs the function that the Railway Labor Act confers on the Adjustment Board.

begs the question since what is "in accordance with the Railway Labor Act" is the very point at issue in this case.[7]

As stated above there are no prior court decisions on the issue involved and there was no administrative determination in the instant case. There is, however, a very important administrative decision on a closely analogous situation which the Court below does not mention. That is a decision by the National Mediation Board relative to its own power to interpret mediation agreements. The authority given the Mediation Board to interpret agreements made in mediation is precisely the same as that given arbitration boards to interpret arbitration awards (45 U. S. C. 155, Second). The National Mediation Board had been requested by the Chesapeake & Ohio Railway Company to give an interpretation of a mediation agreement which had subsequently been included in an over-all collective bargaining agreement. The Mediation Board stated:

> "From the record before it and particularly in the light of the specific circumstances indicated in the Statement above, namely, that the mediation agreement in question has in reality now been superseded by having been made a part of the basic agreement between the Chesapeake and Ohio Railway Company and its clerical, office, station, and storehouse employees, the National Mediation Board finds that any issue now growing out of the interpretation or application of any section of what originally was the mediation agreement in question is one which, if not settled in direct conference between the parties, as contemplated by the Railway Labor Act, may be submitted

[7] The Court of Appeals suggests that if parties desire to limit an arbitration board's powers of interpretation they can include a provision in the arbitration agreement itself limiting the powers of interpretation to a specified time. While that suggestion may serve to mitigate the disastrous effect of the decision with respect to future arbitrations, it gives no protection to the Adjustment Board's jurisdiction over disputes arising out of the interpretation or application of agreements embodying the results of the 211 arbitrations that have heretofore been had and in which the important problem raised by the decision below was not anticipated.

to the National Railroad Adjustment Board for further handling in accordance with Section 3 of the Railway Labor Act." (*Brotherhood of Railway and Steamship Clerks* v. *The C. & O. Railway Company*, National Mediation Board Interpretation No. 12, Case No. A-225, Seventh Annual Report, pp. 47-48.)

The consequences of the decision below are a serious threat to the continued functioning of the Railway Labor Act since it would result in utter confusion in the settlement of disputes arising from interpretation and application of contracts agreed to as a result of negotiation, mediation and arbitration. Rules arrived at through direct negotiations could not be referred to an arbitration board and would have to go to the Adjustment Board. Rules arrived at through mediation, if the position taken below were upheld, would presumably be submitted to the Mediation Board since its powers of interpretation are parallel to those of the arbitration board. Rules arrived at through arbitration would, of course, go back to the original arbitration board. Yet, as in the present contract, the clauses of a collective bargaining agreement are interrelated and tied together by cross reference and by mutual dependence so that the interpretation of one section frequently determines the meaning of another. (R. 146-149.) The possible inconsistency which would result from submitting disputes as to interpretation to the various bodies would certainly impair the effectiveness of the contracts, and it is these contracts upon which the Railway Labor Act principally relies to maintain harmonious labor relations. See Section 2, First. The existence of the decision below provides an incentive to evade Adjustment Board jurisdiction through resort to devices not heretofore generally believed to be available.

In effect, the result of the Court's opinion is to transform a body designed to meet a temporary emergency and whose powers were voluntarily delegated to it by the parties in

order to avoid a work stoppage into a semi-permanent administrative agency whose functions duplicate or supersede the statutory functions of the Adjustment Board. Such a result might well be a deciding factor in deterring the submission of a serious dispute to arbitration thus frustrating one of the devices utilized by Congress to achieve peace in the railway labor field.

2. Assuming jurisdiction in an arbitration board to interpret a collective bargaining agreement, a second issue raised in the Courts below was whether the particular interpretations in this case did not go beyond the scope of the questions referred to the board of arbitration and whether two of them constituted amendments to the original awards rather than valid interpretations. While these questions may appear to be of limited significance because their answer depends upon the particular facts of this specific case, actually the decisions involve basic questions of policy on how far the interpretative powers of the Adjustment Board are to be transferred to boards of arbitration.

This transfer of jurisdiction from the Adjustment Board was accomplished in the first place by treating applications of the agreement to particular situations as matters of interpretation, even though such applications were not submitted to the board of arbitration in the original submission.

Under the structure established by the Railway Labor Act the application of particular provisions of collective bargaining agreements to specific situations is a problem for the Adjustment Board. It is a matter of the administration of the agreements rather than their formation. Thus in discussing its own power of interpretation the Mediation Board stated:

> "Under Section 5, second, of the Railway Labor Act, the National Mediation Board has the duty of making interpretation of the specific terms of mediation agreements. * * *.

> "In making such interpretations, the National Mediation Board can consider only the meaning of the spespecific terms of the mediation agreement. The Board does not and cannot attempt to interpret the application of the terms of a mediation agreement to particular situations. This restriction in making interpretations under Section 5, second, is necessary to prevent infringement on the duties and responsibilities of the National Railroad Adjustment Board under Section 3 of title I of the Railway Labor Act, and any adjustment boards set up under the provisions of section 204 of title II of the Act in the air-line industry. These sections of the law make it the duty of such adjustment boards to decide disputes arising out of employee grievances, and out of the interpretation or application of agreement rules." (Fifteenth Annual Report of the National Mediation Board, pp. 61, 62)

Almost any question of application can be phrased as a question of interpretation and that was what was done in submitting the specific questions in this case.[8] ORT objected that the question of application had not been submitted to the board. (R. 87) In both instances the Court below decided the issue in such a way as to enlarge the authority of the arbitration board at the expense of the National Railroad Adjustment Board; the questions were held to be those of interpretation rather than application.

Similarly, the decision as to whether the particular decisions constituted amendments to the prior award, rather than interpretations, was decided in favor of the arbitration

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[8] The original submission is set forth in the Arbitration Agreement appearing in the Record beginning at page 23. The questions for interpretation are set forth in the Record at pages 60, 61 and 102. One question was whether the term "train order" covered "Form M", a document governing the movement of motor cars. A second question was whether the tearing off and handling of messages received on teletype machines in telegraph offices designated by the letters, BO, Q, DA and MJ was to be performed exclusively by telegraphers because such work was part of the duties of operators of such machines, who were admittedly covered by the agreement.

board's power. It is not disputed that arbitration boards do not have authority to amend an award which they have once issued since their authority stems solely from the voluntary submission of the issue by the parties involved.[9] The Court below did not assert that the arbitration board had power to amend its award; rather it treated the action of the board as being interpretation rather than amendment.[10] Here again the power of the board of arbitration was expanded by the Court's decision which established a broad definition of the term "interpretation" in order to include action which in our opinion constituted amending an existing award.

When the results of this holding are added to the results of the holding discussed in point one we find that boards of arbitration are not only given a continuing power to interpret agreements but are in effect constituted semi-permanent administrative agencies to administer these same agreements. This is such a drastic alteration of past procedures under the Railway Labor Act that it should be reviewed by this Court.

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[9] A case directly in point is *Midcontinent Air Lines, Inc.* v. *Brotherhood of Railway and Steamship Clerks*, 83 F. Supp. 976, W. D. Mo., 1949.

[10] It is our contention that the classes of employees to be governed by the contract as set forth in the "scope rule" was drastically altered by the so-called interpretation. Similarly, it is our position that authority to handle train orders was qualified by the so-called interpretation to vest such authority with respect to the movement of motor cars in motor car operators under certain conditions.

Conclusion

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Specifically involved in this controversy are Sections 3, 5, 7, 8 and 9 of the Railway Labor Act (45 U. S. C. 153, 155, 157, 158, 159) which provide in part as follows:

"Sec. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

* * * * *

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the dispute."

* * * * *

"Sec. 5. Second. (d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall

be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator."

* * * * *

"Sec. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: Provided, however, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

* * * * *

"Sec. 8. The agreement to arbitrate—

* * * * *

"(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award;"

"Sec. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

"Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the

merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

"Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

"(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

"(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

* * * * *

"Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: Provided, however, That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part."

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Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 126.

THE ORDER OF RAILROAD TELEGRAPHERS,
Petitioner,

v.

THE NEW YORK CENTRAL RAILROAD COMPANY
(Buffalo and East),
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI.

Statement.

Petitioner, The Order of Railroad Telegraphers, seeks a writ of certiorari to review a judgment of the United States Court of Appeals for the Second Circuit which affirmed an order of the United States District Court for the Southern District of New York granting respondent's motion for summary judgment, dismissing the petitioner's alleged cause of action and denying petitioner's cross-motion for summary judgment.

The judgment sought to be reviewed was entered upon the unanimous decision of the Court of Appeals,

consisting of Chief Circuit Judge Learned Hand and Circuit Judges Swan and Chase, which is reported at 181 F. 2d 113. The opinion of Judge Ryan of the District Court is not officially reported.

The proceeding in the District Court was commenced by the filing of a petition to impeach a formal interpretation by a statutory Board of Arbitration of an arbitration award rendered by that Board in a railway labor dispute between the parties. The proceeding to impeach the interpretation, as well as all administrative proceedings prior thereto, are governed by the provisions of the Railway Labor Act of 1926, as amended (44 Stat. 577, 48 Stat. 1185; 45 U. S. C. § 151 *et seq.*).[1]

The administrative proceedings leading up to the rendition of the award and interpretation of the Board of Arbitration sought to be impeached were set in motion on April 30, 1945 by service by petitioner, The Order of Railroad Telegraphers (hereinafter referred to as the "Organization"), upon respondent, The New York Central Railroad Company (Buffalo and East) (hereinafter referred to as the "Railroad"), of written notice under the provisions of the Railway Labor Act demanding wholesale rules changes in the then existing collective bargaining agreement between the parties.

Following extended negotiations between the Railroad and the Organization, resulting in agreement by the parties on the majority of some 38-odd proposed rules, the services of the National Mediation Board were invoked by the Organization, under the provisions of Section 5, First (a) of the Railway Labor Act, to adjust and compose differences as to the bal-

[1] Pertinent provisions of the Railway Labor Act are set forth in Appendix hereto, *infra*, pp. 15-20.

ance of the rules. The National Mediation Board assumed jurisdiction of the dispute and by the process of mediation resolved all differences except as to seven proposed rules.

The National Mediation Board then induced the parties, pursuant to the provisions of Section 5, First of the Act, to submit their controversy as to these seven rules to voluntary arbitration under the procedure provided for by Sections 7-9, inclusive, of the Act. On March 19, 1948 the parties entered into an arbitration agreement (R. 23) submitting their differences to a final and conclusive determination by a Board of Arbitration of three members, and providing in Article Fifteenth thereof that any differences arising as to the meaning or application of the forthcoming arbitration award would be referred back for a ruling to that Board (R. 25).

Thereafter, each party nominated an arbitrator intimately familiar with railway labor matters and these chose Dr. William M. Leiserson as the third arbitrator and chairman of the Board. Dr. Leiserson had been chairman of the National Mediation Board when that board had first been created in 1934, serving in that capacity from 1934-1937 and from 1943-1944;[2] in addition, he had served as first chairman of the National Railway Labor Panel created by President Roosevelt in 1942.[3]

The Board of Arbitration held hearings lasting almost one month at which the parties produced oral and documentary evidence amounting to almost 3500 pages of stenographic minutes and 253 exhibits the bulk of which related to the two rules on which inter-

[2] 1st Ann. Rept. Nat. Med. Bd. II (1935); 9th Ann. Rept. Nat. Med. Bd. II (1943).

[3] 8th Ann. Rept. Nat. Med. Bd. 3 (1942).

pretation was later sought. The Board rendered its award with respect to all the rules in dispute on June 24, 1948 (R. 109) and on the following day the Board filed its award, together with all papers and documents upon which it was based, in the office of the Clerk of the United States District Court for the Southern District of New York as required by the arbitration agreement and the Railway Labor Act.

In accordance with Article Eleventh of the arbitration agreement (R. 24), the award automatically became effective on July 1, 1948 although the award by its terms contemplated a complete formal contract between the parties at some later date in conformity therewith (R. 109-113). Before such a contract could be consummated, differences arose between the parties concerning the meaning and application of two of the rules contained in the award, namely, Rule 1 (Scope Rule) and Rule 22 (Train Order Rule) (R. 43-48). Briefly, the dispute was whether these rules as awarded contemplated placing certain work within the exclusive jurisdiction of the Organization although such work had theretofore been performed by railway employees belonging to other crafts and classes represented by different unions.

On August 3, 1948 the rules awarded by the Board of Arbitration, together with the rules previously agreed upon after negotiation and mediation had been completed, were reduced to writing in the form of a single instrument (R. 146) which purported to supersede only the then existing collective bargaining agreement between the parties (R. 148) but left unaffected the arbitration agreement and award and the commitments undertaken by the parties thereunder.

On the same date, and subsequently, the parties discussed their differences as to the meaning and appli-

cation of the two rules in the award, both orally and by correspondence, and also considered a joint application to the Board of Arbitration for clarification of the award in that respect (R. 44-45). Settlement of these differences not being attained, the Railroad applied to the National Mediation Board to reconvene the Board of Arbitration for interpretation and clarification of its award in accordance with Article Fifteenth of the arbitration agreement (R. 25) and Section 5, Third (d) of the Railway Labor Act.

Thereafter, extensive correspondence was exchanged between the parties and the National Mediation Board (R. 50-107) in which the Railroad set forth fully and completely the precise nature of the controversy over the award and the questions upon which interpretation was necessary and desired, and in the course of which the Organization aired at great length various objections to the jurisdiction of the National Mediation Board to reconvene the Arbitration Board and of the Board of Arbitration to rule on its award.

On October 21, 1948 the National Mediation Board advised the parties that the Board in executive session had considered the question raised by the Railroad's request and decided that the Arbitration Board should be reconvened under the provisions of the arbitration agreement and the Railway Labor Act (R. 108).

The Board of Arbitration subsequently reconvened in accordance with Section 7, Third (c) of the Act and conducted further hearings upon the matters in controversy. The Organization appeared at these hearings, reasserted its contentions with respect to lack of jurisdiction and argued the merits of the questions submitted for interpretation and clarification. On January 15, 1949 the Board of Arbitration issued its rulings with respect to the meaning and

application of the two rules in dispute (R. 125) which interpretation was filed on January 17, 1949 in the office of the Clerk of the United States District Court for the Southern District of New York.

The Organization then commenced the present proceedings by filing a petition (R. 2) seeking to impeach the interpretation of the Board of Arbitration under the procedure provided by Section 9 of the Act. After filing its answer to the petition (R. 4), the Railroad moved for summary judgment (R. 7) and the Organization made a cross-motion for summary judgment (R. 12). District Judge Ryan in his opinion and order (R. 16) granted the Railroad's motion for summary judgment dismissing the Organization's impeachment petition, and denied the cross-motion. This order was affirmed by judgment of the Court of Appeals for the Second Circuit filed March 30, 1950 (R. 154).

Issues Before This Court.

The only real issue presented on this application is the question best described by the Court of Appeals in the following language: "Whether a Board of Arbitration which has made an award pursuant to the Railway Labor Act, 45 U. S. C. A. § 151 *et seq.*, loses jurisdiction to interpret the award once its terms have been incorporated into a collective bargaining agreement." (R. 154).

The Organization has also raised the wholly subsidiary issue, admitted by it to be "of limited significance" (Petition 13), of whether the Board of Arbitration exceeded its authority by allegedly deciding questions not referred to it and by amending, rather than interpreting, its original award.

POINT I.

The petition raises no question sufficiently substantial to warrant review by this Court.

Essentially, the only material ground urged by the Organization for entertaining its petition for review is the novelty of the primary issue. The novelty of the question is to be conceded but, once admitted, it is the alpha and omega of the matter. The novelty originates in the Organization's insistence on attributing to the unambiguous provisions of the Railway Labor Act and the arbitration agreement a lack of meaning which is at once dispelled by simple recourse to the relevant provisions of each.

Both the Railway Labor Act and the arbitration agreement between the parties clearly give the Board of Arbitration jurisdiction, as asserted in the administrative proceedings below, to interpret the meaning and application of the language used by it in making the award.

Section 8(m) of the Act provides that:

> "The agreement to arbitrate—
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> * * * *
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> (m) shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board * * * and that such ruling, when acknowledged in the same manner and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award;"

Article Fifteenth of the arbitration agreement between the parties so provided without any material change in language (R. 25). In addition, Section 5, Third (d) of the Act provides:

> "Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration * * *, and arrange for the reconvening of said Board of Arbitration * * *, and shall notify the respective parties to the controversy of the time and place at which the Board * * * will meet for hearings upon the matters in controversy to be submitted to it."

These provisions of the Act and agreement obviously are completely determinative of the rights of the parties here. In an attempt to overcome their effect, the Organization seeks to stress the subsequent action of the parties, in executing a collective agreement including provisions of the award, as apparently foreclosing the Railroad from the assertion of the remedy so clearly provided by statute and contract. In practical effect, it is the burden of the Organization's contention that the award is thereby expunged and the parties are relegated to administrative proceedings before the National Railroad Adjustment Board.

This contention, for one thing, ignores the plain fact that the collective agreement between the parties

did not purport to abrogate the award or arbitration agreement (R. 148-149) nor did it include all matters awarded by the Board of Arbitration (R. 110-117, 121-123, 146, 148).

In interjecting the matter of an alternate remedy under the Act, the Organization has discoursed at length on the subject of the "exclusive" jurisdiction of the National Railroad Adjustment Board under Section 3, First (i) of the Act over questions of interpretation or application of negotiated agreements. That subject has recently received the considered attention of this Court in *Slocum* v. *The Delaware, Lackawanna & Western Railroad Company,* 339 U. S. 239 and *Order of Railway Conductors* v. *Southern Railway Company,* 339 U. S. 255, so that it may be regarded as settled that, at least in the circumstances there presented, questions involving the interpretation or application of *negotiated agreements* cannot be litigated in the courts but must be determined in the first instance by the Adjustment Board.

As topical as that proposition may be, it hardly is responsive to the issue at hand nor does the Organization actually contend that it is. It is pertinent to observe that while the Organization has vaguely and obliquely given the impression that those two decisions are determinative of the issue here, it has nowhere stated that the judgment below is in conflict with the holdings of this Court. On the contrary, it is forced to admit that there are no prior court decisions on the primary issue (Petition 11).

The power vested in a Board of Arbitration to interpret and apply its own award is conceded. This power was given to such Boards by Congress in 1926 in the original enactment of the Railway Labor Act since which date the arbitration provisions of the Act

have remained unchanged. In its original form, the Act contained no provision for a National Railroad Adjustment Board to interpret and apply negotiated agreements. Such a board was created for the first time in the 1934 amendments to the Act (48 Stat. 1191). The legislative history of those amendments is completely devoid of any evidence of intent by Congress to infringe upon the arbitration procedure theretofore established and then available to disputants. As the Court of Appeals below correctly noted, there is no provision in the Act which causes the award to expire simply because its terms have been incorporated into a contract (R. 158).

The power given to the Board of Arbitration to interpret and apply its award is not an unlimited one. It is circumscribed in point of time by the life or duration of the award as given to it by the parties. Section 8(j) of the Act provides:

> "The agreement to arbitrate—
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> * * * *
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> (j) shall provide for the date from which the award shall become effective *and shall fix the period during which the award shall continue in force;*" (Italics ours.)

The parties here could have fixed a cut-off date on the Board's power to rule on its award by a specific time limitation[4] or by providing for termination of

[4] The eight Annual Reports of the United States Board of Mediation (predecessor of the National Mediation Board), covering the administration of the Railway Labor Act from 1926 to 1934, inclusive, disclose that of the 56 arbitration awards reported, in all but six instances the parties fixed an absolute period of one year with right to terminate thereafter; in two

the award upon inclusion of its provisions in a formal contract. Instead of doing so, by provision of Article Eleventh of the arbitration agreement between the parties (R. 24) that the award "shall continue in effect in accordance with the provisions of the Railway Labor Act, as amended", they agreed that the award should continue in effect until such time as either or both of the parties took some formal action in accordance with the processes prescribed by the Railway Labor Act to change, modify or rescind it. No contention is made by the Organization that any such action has been taken by either of the parties. The Court of Appeals appreciated that where the parties have not chosen an earlier date, such a choice cannot be made for them (R. 159).

The simple answer to the jurisdictional issue created by the Organization lies in the plain import of the arbitration provisions of the Act and of the arbitration agreement between the parties. No novel and strained interpretation of their unambiguous terms can overcome their clear effect. The power of the Board of Arbitration to interpret and apply its award can only be foreshortened by the contract to arbitrate entered into by the parties before the event.

The Organization has recognized that the situation can be so protected with respect to future arbitrations

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instances a period of precisely one year was fixed and in two other cases a fixed period of greater or less than one year terminable thereafter was agreed upon in the arbitration agreement. 1st Ann. Rept. U. S. Bd. of Med. 36-46 (1927); 2d Ann. Rept. 37-53 (1928); 3rd Ann. Rept. 19-28 (1929); 4th Ann. Rept. 16-18 (1930); 5th Ann. Rept. 18-19 (1931); 6th Ann. Rept. 27-28 (1932); 7th Ann. Rept. 27-28 (1933); 8th Ann. Rept. 27 (1934).

The National Mediation Board has discontinued the practice of reporting such information in its annual reports.

but suggests the possibility that arbitration agreements in the past may not have limited the duration of awards and the time within which Boards of Arbitration retained jurisdiction to interpret and apply their awards (Petition 11).[5] Aside from the fact that it has offered nothing but conjecture in this respect, available information, derived from the one governmental agency charged with the duty of supervising the arbitration procedure established under the Act, indicates that there is a substantially uniform practice in the industry for parties submitting to arbitration to fix the duration of the award and the power of the Arbitration Board to a limited period of time.[6]

As far as anything in the record or in the Organization's petition discloses, the instant case is *sui generis* and of moment only to the parties concerned.

The matter of *Brotherhood of Railway and Steamship Clerks* v. *The C. & O. Railway Company et ano.*, N. M. B. Interpretation No. 12, Case No. A-255, cited by the Organization (Petition 11), arose under an

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[5] The Organization has stated that 211 arbitrations have been conducted since 1934 (Petition 7). 15th Ann. Rept. Nat. Med. Bd. 20 (1949) fixes the total of arbitration agreements consummated since 1934 at 115 which, of course, would include instances where the parties settled their differences without any award being rendered. See, for example, 9th Ann. Rept. Nat. Med. Bd. 32 (1943).

[6] Note 4 *supra*. During the period 1926-1934 there were three instances of interpretation by a Board of Arbitration of its award. In each such instance the arbitration agreement provided for a one-year duration for the award terminable at any time thereafter and on each occasion interpretation was sought and rendered within the one-year period. See 2d Ann. Rept. U. S. Bd. of Med. 43-44, 52 (1928); 3rd Ann. Rept. U. S. Bd. of Med. 26-27 (1929).

entirely dissimilar set of circumstances, in no way involving mediation or arbitration as a step in arriving at a collective agreement, and, needless to say, did not concern any of the arbitration provisions of the Railway Labor Act. To the extent that the Mediation Board there refused to render an interpretation while in the instant case it ordered the Arbitration Board to reconvene for that purpose, that proceeding, of course, would tend to support the Railroad's position, assuming it were in point.

The Organization has professed its concern that the judgment below might result in "frustrating one of the devices utilized by Congress to achieve peace in the railway labor field" (Petition 13). In the Fifteenth Annual Report of the National Mediation Board (1949), at p. 1, it is stated to be "the duty of the National Mediation Board to aid in maintaining industrial peace in the railroad and air-line industries and thereby preventing interruptions to the free flow of commerce between the States." It is significant that that Board charged with a duty of such serious consequence has not shared the Organization's concern to the extent of intervening in these proceedings in support of the petition.

The subsidiary issue as to whether the Board of Arbitration exceeded its authority by going beyond the scope of the submission and by amending its award is disposed of by the Organization's frank concession that these questions are "of limited significance because their answer depends upon the particular facts of this specific case" (Petition 13). As this Court has stated: "We do not grant certiorari to review evidence and discuss specific facts." *United States* v. *Johnston,* 268 U. S. 220, 227. Certiorari is

not granted "merely to give the defeated party in the Circuit Court of Appeals another hearing." *Magnum Import Co.* v. *Coty*, 262 U. S. 159, 163.

CONCLUSION.

No important or substantial questions having been shown which would warrant review by this Court, the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX.

Railway Labor Act (45 U. S. C. §§ 155, 157, 158, 159).

Section 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory ef-

forts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

* * * *

Section 5. Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

* * * *

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on

such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

* * * *

Section 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

* * * *

Section 7. Third. (c) Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed

in the same district court clerk's office, as the original award and become a part thereof.

* * * *

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however,* That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

* * * *

Section 8. The agreement to arbitrate—

* * * *

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

* * * *

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by

agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award;

* * * *

Section 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration

rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however,* That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further,* That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

* * * *